

became law in June 1832, which gave rise to the more thoroughly popular attachment to the Whig proposals, and to the widespread reaction against further change.

How are we to assess Hegel's article in the light of this background? As an analysis of the whole economic, social and constitutional situation out of which the Reform Bill issue arose, it was immensely superior to the parliamentary reports published in the *Prussian State Gazette*, and probably better than anything else written in German at the time. By modern standards, however, it is an unsatisfactory analysis, since by basing his approach upon what he regarded as the predominantly unbiased journalism of the *Morning Chronicle*, he allowed himself to be misled, on matters which were of central importance to his argument, by Utilitarian propaganda.⁶¹ This is certainly interesting to the historian of ideas in that it brings together two of the most influential philosophical movements of the time, but since it resulted in Hegel's misassessing a situation he thought he was analysing objectively, it considerably reduced the intrinsic value of his work. As propaganda in its own right however, as an apologia for the Prussia of 1831, the result of an appreciative analysis of what had been accomplished during the quarter of a century following the disastrous defeat at Jena, the article can only be regarded as highly successful. Like all effective propaganda, and indeed like all thinking about human affairs, it was to some extent self-justifying in its pragmatic results. By calling attention, during a particularly critical revolutionary period, to the merits of the Prussian administration, the value of stability and security, it almost certainly helped the Berlin government to weather the storm in the way that it did.

But whatever conclusions we reach with regard to the merits or demerits of the analysis and propaganda the article involves, it is absolutely essential that we should not confuse its import with that of the dialectical exposition of law, morality and ethical life worked out in the *Philosophy of Right*.

Obligation, contract and exchange: on the significance of Hegel's abstract right

SEYLA BENHABIB

Since the publication of C. B. Macpherson's *The Political Theory of Possessive Individualism*, it has been a familiar argument that the models of political obligation and authority put forward by contractarian thinkers presuppose the institutions of a liberal market society.¹ Macpherson has also claimed that contract theorists smuggled into their conception of the state of nature historical and social presuppositions which could only characterize the behavior of men in modern market societies. Hegel in some way anticipated Macpherson's thesis when he analyzed the connection between the norms of personality, property and contract, and the structure of modern exchange relations, in his Jena writings. More significant is the relation, at the normative and methodological levels, between Hegel's *Philosophy of Right* and the contractarian natural rights tradition which began with Thomas Hobbes. J. Ritter, K.-H. Ilting and Manfred Riedel have referred to Hegel's discussion of persons, property and contract as evidence that the principles of Hegel's political philosophy are continuous with the tradition extending from Hobbes to Fichte.² In this essay, however, I will argue that Hegel's reception of the contractarian natural rights tradition rests on an irony which has been little appreciated until now. While he certainly analyzes contract in its specifically modern sense as the 'exchange of equivalents' in the market place, Hegel strongly denies the appropriateness of the contract metaphor for elucidating either the normative grounds or the historical-genetic origin of political authority. On the other hand, Hegel accepts the conclusions of the contractarians from Hobbes to Fichte insofar as they argue for a novel paradigm of political legitimacy. Following Max Weber, I use the term legitimacy to mean 'the grounds of obligation and authority relations among men'.³ The novelty of the contractarian paradigm of legitimacy is that the recognition of the individual as someone entitled to rights becomes the necessary ground for accepting obligation towards a public authority. In the first part of this essay, I claim that Hegel transforms the contractarian paradigm of legitimacy into a philosophical justification of the rule of law

in the modern state. The legitimation function of forms of abstract right in Hegel's *Philosophy of Right* is thus twofold: they serve as the philosophical foundations of the rule of law in the modern state, and they justify practices of exchange in the market place. 'Abstract right' is of course Hegel's term for the traditional concept of 'natural right'.

In the second half of this essay I discuss the methodological divergence between Hegel's *Philosophy of Right* and previous contractarian procedures. Unlike the latter Hegel does not take as his starting point the condition of an isolated self motivated to recognize the right of others through the fear of death (Hobbes) or through an intuitive and presocial knowledge of the natural law (Locke). Nor does Hegel understand 'persons' to be Kantian moral agents endowed with the noumenal ability to act in accordance with the categorical imperative. He proceeds from the condition of a society of individuals who have recognized one another's entitlement to be persons in order to describe the concrete forms of interaction compatible with this norm. I argue that Hegel's methodology is based on systematic assumptions, which sharply distinguish his political philosophy from the tradition known as 'possessive individualism' as well as the rationalist contractarian tradition of Kant and Fichte.

In recent years both liberal and marxist thinkers have renewed their interest in Hegel's political philosophy. On issues such as the nature of the modern state, its legitimacy and the contradictions and crises of market societies Hegel is seen as offering an alternative to mainstream liberalism and to orthodox marxism. The opening arguments of the *Philosophy of Right* demonstrate this contemporary relevance of Hegel's political philosophy most clearly. I conclude that while Hegel challenges the individualist and ahistorical presuppositions of the modern liberal tradition he confronts marxism with a type of social realism that avoids reducing the normative dimension of collective life to a positivist science of society.

I

Hegel's *Philosophy of Right* with its clearly articulated distinction between state and civil society provides the first cogent analysis of the modern organization of economic life. Hegel calls a 'system of needs' the form of economic life which is arranged around the contractual sale and purchase of goods among property-owners. This notion of a 'system of needs' as a depoliticized sphere of commercial transactions had its forerunners among the British political economists whose influence on Hegel has been well documented.⁴ However, if we distinguish between modern and premodern exchange, and between modern and premodern norms of contract, I would maintain that the uniqueness of Hegel's analysis, both in the Jena writing and

in the *Philosophy of Right*, consists (a) of depicting the structure of specifically modern exchange relations as the reciprocal transfer of proprietary rights among formally equal property-owners and (b) of clarifying the normative presuppositions of such exchange.

As early as 1802–3, in his essay on *Natural Law*, Hegel discusses the connection between the spread of formal, legal norms in social life and the emergence of market relations. In a passage which Lukács has made famous he describes the clash between the values of the *Politiker* (statesman) and the *Bürger* (burgher) as the 'tragedy and comedy of ethical life'. While tragedy is the conflict of values that are ends in themselves, comedy represents the usurpation of the status of an absolute by something that has merely relative value. The comic element must be given its due in the modern world in which the values of the feudal nobility have succumbed to those of the middle class within the ethical community of the nation. 'The principle of universality and equality had to take possession of the whole in such a way as to replace the particular classes with a mixture of the two. Beneath the law of formal unity what has really happened is that this mixture has cancelled the first class and made the second class into the sole class of the nation.'⁵ When values like the security of property, the satisfaction of needs and the enjoyment of goods are universalized, relations in the ethical community come to be defined by the legal norms of formal equality among individuals. In the *Jenaer Realphilosophie* Hegel gives a more precise analysis of the relationship between the spread of monetary and commercial activity and the regulation of social life through legal norms. He has discovered the structure of modern exchange relations. In exchange, two distinct individuals engage in a monetary transaction to transfer their property rights over certain goods. Exchange relations are *formal*. As long as they do not violate the rights of ownership of the parties involved, their content and substance remain undefined. From the standpoint of exchange no characteristic of individuals is relevant apart from the fact that each owns a certain property desired by the other. The *equality* of individuals *qua* property owners is presupposed. Each can only expect from the other what the other can expect of him, namely, the mutual transfer of property rights. The *reciprocity* of the parties is thereby stipulated. Neither appropriates the property of the other by force, but respects the right of the other to dispose of it through a contractual transaction (the principle of formal freedom). The equality of the object of property is also thereby established. The acquisition by one person of the property of another can only occur through the exchange of equivalents. Property rights are transferred in return for the equivalent payment of the *value* of the property in money. 'This value itself as a thing', writes Hegel, 'is money... Each gives up his possession of his own accord... Only because the other sells his goods [*Sache*] that I also do so; and this equality in the

thing as its interior [element] is value, which has my complete consent and the opinion of the other – the positive mine as well as his, the unity of my and his will...⁶

In order to evaluate the significance of Hegel's analysis we should consider that in all economic systems exchange, or the 'mutually appropriative movement of goods between hands',⁷ is regulated by certain norms of property and contract. Premodern exchange relations, however, are restricted only to certain groups of individuals, who on account of their special status in society enjoy certain privileges, among them the right to engage in exchange.⁸ It is also characteristic of such premodern systems that the individual cannot truly dispose of all external goods as his property since his transactions with externality are restricted by magical, religious and other rules of social-symbolic significance. According to Claude Lévi-Strauss; 'For primitive thought... goods are not only economic commodities, but vehicles and instruments of an other order of reality: strength, power, sympathy, status and emotions.'⁹ Taking place against a background of restricted status privileges and symbolically limited patterns of disposing of external goods, premodern exchange relations generate special bonds of obligation and reciprocity among individuals over and beyond the correct transfer of goods. By contrast the distinguishing feature of modern economic systems is that neither traditional relations of status and hierarchy among persons, nor the social and symbolic characteristics of externality can restrict the validity of exchange transactions. In his studies on ancient law and economy Sir Henry Maine characterized this difference by the pithy phrase 'from status to contract'.¹⁰ Not only does Hegel anticipate Maine's conclusion, but in the *Philosophy of Right* he provides the most systematic analysis of the norms of personality, property and contract which are presupposed by modern exchange.

A contract results from the free initiative of two parties, each of whom is recognized as a legal person, to transfer rights of ownership in accordance with a formally correct procedure. The modern contractual relation is composed of three features: the free initiative (*Willkür*) of the contracting parties, their mutual consent and agreement, and the external (*äusserliche*) object over which the transfer of ownership rights is to be transacted (*PhR*, §75). The act of contract cannot generate the conditions of its own validity but presupposes background norms and rules the compliance with which confers validity on the contractual transaction. Hegel derives these background norms and rules from the rights of personality and property. First, valid contractual transactions presuppose the non-contracted and non-contractual capacity of individuals to be treated as beings entitled to rights. For only when individuals are recognized as persons can their free initiative and mutual consent result in a reciprocally binding transaction. The contractual relation

generates obligation because, *qua* persons, individuals are entitled to be bound by such conditions as they would freely accept.¹¹

Second, valid contractual transactions involve the transfer of rights over property. The proprietary rights of the individual are stipulated prior to the act of contract. The right of property entails the rights of possession (*Besitz*), use and alienability. Hegel rejects the possibility that the right of property (*Eigentum*) can be disassociated from that of possession and maintains that ownership is in essence 'free and complete' (*PhR*, §67). Without this latter stipulation alienability could not be a right, since the individual would not be entitled to transfer to another his full and complete rights of ownership. An object of property may be treated as such only when a person can enjoy full and unrestricted ownership rights with respect to it. Anything, capacity or activity 'external' to the person, can become an object of property. Externality does not mean simply that the thing is physically distinct from the person. Objects like books, works of art and mechanical inventions are external to the person, not in virtue of being physically distinct from him, but in virtue of being objectifications (*Entäusserungen*), i.e. concrete embodiments of human skills, talents and abilities. The use of such activities can be alienated (*entäussert*) to another for a restricted period of time. Since such activities are an intrinsic aspect of the individual, only the transfer of their use to another for a *limited* period of time is compatible with the non-alienability of personality itself (*PhR*, §67 and Addition). While ownership rights over what is physically distinct from the person can be alienated in full, ownership rights over activities that can be objectified are never relinquished completely; only their limited use and deployment for a period of time can be. The normative scope of modern contract is thus defined: contractual relations can generate duties of obligation among legal persons with respect to external or alienable goods and activities. That which is intrinsically non-alienable, first and foremost the public right of individuals to be recognized as persons, and all that personality entails, cannot be subject of contract.

It is usually assumed that Hegel rejects the use of the contract metaphor to define the authority of the modern state on conservative political grounds. Indeed, insofar as the 'contract' is construed as a historical or fictitious act through which the people come together to form a sovereign public body, Hegel denies the political thrust of contractarian arguments (*PhR*, §258).¹² The spontaneous consent of individuals can never constitute sufficient ground to challenge the legitimacy of an established political authority. But behind Hegel's rejection of contractarian arguments lies not only a conservative predilection. Having discovered the structure of modern exchange relations, and having specified the normative scope of modern contractual transactions, Hegel denies the *normative appropriateness* of this metaphor to define the

grounds of specifically *modern* relations of obligation and authority. The contractarian tradition has confused a norm which has binding validity in the sphere of private transactions with norms governing the rights of political bodies like the state.

Just as at one time political rights and duties were considered and maintained to be an unqualified private property of particular individuals, something contrasted with the right of the monarch and the state, so also in more recent times the rights of the monarch and the state have been regarded as subjects of a contract, ... as something embodying merely a common will and resulting from the arbitrariness of the parties united into a state. However different these two points of view may be, they have this in common, that they have transferred the characteristics of private property into a sphere of a quite different and higher nature. (*PhR*, §75 and Addition)¹³

Behind the reference to that time 'when political rights and duties were considered and maintained to be an unqualified private property of individuals' lies the issue of German particularism. In his early essay on the *Constitution of Germany*, Hegel had written that the characteristic freedom of the German principalities was founded upon the confusion of their sovereign state power with their private civil rights: 'but the nature of this legal arrangement consists in this, that an estate's constitutional position and its obligations are not fixed by universal law proper; on the contrary, on the analogy of civil rights, the relation of each estate to the whole is something particular in the form of a property.'¹⁴ Hegel's sensitivity towards the political fragmentation of Germany only partly explains his repugnance to contractarian arguments for it is a feature of all premodern systems of political obligation and authority and particularly of feudalism, that the obligation and duties owed to those in positions of power are regarded as the contractually guaranteed property of power-holders.¹⁵ Prior to the formation of the modern state, the public rights and privileges of individuals are considered subjects of contract, transferable to others in accordance with certain regulations. The *tour de force* of Hegel's argument consists in pointing out that it is precisely because of the sense contract acquires in modern market societies that its use to define the grounds of modern obligation and authority relations becomes obsolete. If contract is understood in its specifically modern sense as 'the exchange of equivalents' in the market place, then it cannot be used as a norm to define the grounds of political authority in the modern state. These relations of obligation and authority derive their legitimacy from the fact that the public rights of individuals are *not* private property, and cannot be alienated to others at will, but are secured by the impersonal and general norms of the rule of law. Ironically, the paradigm of the rule of law in Hegel's political philosophy is the culmination of that specifically modern concept of legitimacy initiated by the contractarian tradition.

In order to substantiate this claim, I would like to begin with an analysis of the normative logic of contract methodologies.¹⁶ The clearest case of the counterfactual of the social contract serving as an ideal paradigm is found in Kant's *Metaphysical Elements of Justice*. Kant calls the contract a 'juridical fiction' of conditional validity.¹⁷ The legitimacy of civil government can only be established if the principles on which it rests are such that free and rational agents in a hypothetical state of choice would accept them. Since all contract methodology begins by abstracting individuals from traditional relations of authority, hierarchy and inequality, it is thereby stipulated that the *equal* entitlement of such autonomous individuals to natural rights will be a pre-condition of the new civil government.¹⁸ In the state of nature or in the hypothetical choice situation all individuals are equal: their reconstituted relations under civil government must uphold this equality. Upholding such equality means that all individuals have a claim to be treated alike in certain respects. Arbitrary and differential treatment of individuals, incompatible with their rights, would dissolve legitimacy. From moral equality there follows the stipulation of *generality* of treatment. Relations under civil government must be instituted to respect such generality. But the norm of generality can be respected only if obligations placed upon individuals and the rules regulating their social relations are issued in a *uniform* manner from a known public source.¹⁹ The public character of these rules and regulations signifies that all stand under the strictures of a *common* political authority. The material content of these strictures is limited by the simple condition that they do not violate the original rights of individuals. Since all natural-right theorists proceed from certain prepolitical rights, these define a domain of privacy the boundaries of which public authority cannot transgress. Privacy means both privacy of conscience and intentions, and privacy with respect to certain relations to others. Public authority cannot bind the individual's conscience, but only his actions; neither can this authority encroach upon relations between father and child, husband and wife, master and servant.²⁰ Furthermore, as long as transactions among individuals do not violate the norms of equality, generality and publicity individuals are entitled to carry them out freely.

All contract theories, then, contain two elements: first, they prescribe a system of rights, conceptualized under the metaphor of the 'state of nature', and second, they specify a public institutional procedure – conceptualized as the 'social contract' – through which individuals can enjoy these rights as publicly guaranteed liberties. From Hobbes to Fichte natural or basic rights are defined as those inalienable claims of human nature or rationality the respect of which is a necessary condition of political obligation. Since, however, the unlimited exercise of such rights is incompatible with the peaceful and prosperous coexistence of all, the contract of civil government

stipulates in *procedural* terms the necessary limitations to be placed upon these original rights and upon their exercise. This public institutional procedure should satisfy the norms of equality, generality, and uniformity, and should not violate the content of the original rights.

Though no comparable methodological fiction of a state of nature or of social contract is to be found in the *Philosophy of Right*, Hegel also begins his discussion of persons, property and contract with a conceptual abstraction. Proceeding from the single basic norm that each natural individual is a person, that is to say, a being entitled to rights, he seeks to define the content and relations among individuals consistent with this single norm. Unlike the contract theorists, Hegel does not pose the problematic of political obligation and authority: under what conditions would individuals endowed with certain basic rights consent to a system of public institutions as binding and legitimate? But the validity of the contractarian paradigm of legitimacy is not thereby rejected. Rather, Hegel claims that the right of individuals to a free and consensual acceptance of political obligation is satisfied by the institutionalization in the modern state of the rule of law. By the 'rule of law' is to be understood the regulation of social life through general norms issued publicly in a formally correct legal procedure, which also have the character of calculability and predictability.²¹ The *Philosophy of Right* begins with the norm of personality precisely because the universal and alienable claim of every individual to be recognized as a person is the foundational norm of the modern legal system. 'Personality essentially involves the capacity for rights and constitutes the concept and the basis (itself abstract) of the system of abstract, therefore formal right' (*PhR*, §36).

Hegel thus initiates a shift from a contractarian theory of natural rights to a philosophical jurisprudence. With this shift the *Philosophy of Right* complements the early analysis of modern exchange relations with a systematic discussion of modern, positive law. In §211 of the *Philosophy of Right* we read '...in becoming law, what is right acquires not only the form proper to its universality, but also its true determinacy'. It should first be noted that Hegel understands 'right' (*Recht*) in its more general sociological sense as all normatively binding rules of conduct. Such binding rules of conduct can also exist in the form of religious precepts, prophetic utterances, customary rules and traditional sanctions. Individual needs, desires and inclinations can also be made the ground of public norms. By juxtaposing modern positive law to the first set of practices Hegel, like the contract theorists repudiates the normative power of traditional forms of authority and obligation. By arguing against the latter, he distinguishes the impersonal authority of the modern legal system from the authority of a charismatic or tyrannical leader.²² With the formation of a positive legal system normatively binding rules of conduct assume their most adequate form and

specification. What is right, argues Hegel, must have objective existence. It must be publicly known, and it must be valid and universally binding (*PhR*, §§212, 213, 215, 216). When norms of action are made obligatory through a legal system, they fulfill these characteristics. Laws have objective existence since they are publicly promulgated and posited. They are binding because they can be consciously adopted as a rule of their actions by all rational agents who stand equally under the jurisdiction of the same legal system. The public character and positedness of law upholds the *formal right* of persons as rational agents to be obliged only by those rules whose *cognitive* significance they grasp. On the other hand, the fact that laws are general principles of conduct binding all on the same grounds and in the same manner, upholds the *substantive* right of the person to be obliged only by rules which are compatible with the *universal extension* of this obligation to all alike. Hegel concludes that it is only because of this identity between 'its implicit and its posited character that modern positive law has obligatory form in virtue of its rightness' (*PhR*, §212). The modern system of posited statutory law satisfies the norms of generality, uniformity and publicity which are enjoined by the contract theorists as the necessary characteristics of the public procedure of legitimate authority. The right of privacy is interpreted by Hegel in a double sense as entailing the moral and the economic freedom of the person (*PhR*, §114 and Addition to §26).²³

We can see now that in Hegel's political philosophy the norms of personality, property and contract fulfill a *double* function of legitimation: they serve as the philosophical foundations of modern positive law, and they justify modern relations of exchange in the market place. Hegel is aware of this double legitimation function of abstract right because he has grasped its 'rationalizing' force in modern society. Modern exchange relations and the institution of the rule of law initiate a break with the old order by introducing rationality into social life.²⁴ Both developments presuppose the establishment among individuals of the norm of formal equality. Both in law and in economy, hierarchical status and privileges sanctioned by tradition are rejected. The rejection of tradition implies the breakdown of the power of prepolitical communities and corporations, which had previously defined the public status of the person. These become private associations subjected to the centralized authority of the modern state. The rights and duties of individuals are now defined by the general norms stipulated by the state. The regulation of social life through general norms means that the content of exchange relations among formally equal individuals remains undefined. Furthermore, such general norms guarantee uniformity of treatment and render the behavior of the central authority predictable, from the standpoint of modern economic and legal actors. For the smooth functioning of modern exchange relations it is necessary not only that their content and substance

remain undefined, but also that political authority does not arbitrarily interfere in the functioning of formal transactions among individuals. And I would add, it is precisely because he has rejected the atemporal methodological assumptions of the contract theories that Hegel can discover the rationalizing power of abstract right.

II

Hegel grasps the becoming of the modern state as a world historical process generated by the rationalization of tradition through reform or revolution and the spread of bourgeois market relations. He does not view the inalienable right of personality to be something either naturally given or dictated by the mere *a priori* of human rationality. Emerging in the course of a world-historical process the right of the individual to be recognized as a person defines neither the private property of autonomous individuals (as Locke and Hobbes would have it), nor the noumenal capacity of selves to act in accordance with the categorical imperative (as Kant would claim), but instead presupposes the resolution of the 'struggle for recognition'. In the *Phenomenology of Mind* the resolution of the struggle for recognition culminates in a community of universalistic morals.²⁵ This community develops out of the secularized Christian congregation who has come to see the divine not as natural creation or the Godhead but as the very spirit of those united by belief in the divinity of the community of worshippers itself. The secularization of the Christian congregation is preceded in the *Phenomenology* by the destruction of the ancien régime by the French Revolution and by the corrupting yet 'civilizing' norms of civil society. The *Philosophy of Right* does not trace the course of this education (*Bildung*) for the individual or for the collectivity, but begins from the standpoint of a social totality in which the right of individuals to be recognized as persons has become established as an intersubjective practice.²⁶

The right of personality, which attains normative validation with the emergence of a community of reciprocal recognition, presupposes intersubjectivity in two respects. First, Hegel means more than simply that the norm becomes a practice in such a community. The claim is that the justification of this norm cannot derive from transcendental values of human nature or rationality but is grounded in the logic of relations of reciprocal recognition. Second, recognition (*Anerkennung*) defines both the Hegelian conception of self-identity and the social practice of individuals that are consistent with such a conception. 'Reciprocal recognition' is at once a theoretical term defining the constitution of self-identity in the human person and a normative practice among individuals who have reached self-

knowledge.^{27*} The claim that human identity is constituted through the theoretical and practical relation between self and other distinguishes Hegel's conception of subjectivity from Hobbes' and from Kant's.

Hobbes defines the condition of the modern self to be a basic drive for self-preservation. Self-preservation is a process of activity and assertion, as such it is not a final goal but the condition for a goal.²⁸ The power of the self to be what it is is revealed in the continual movement of human desire from one object to another. Infinite striving affirms a heightened sense of self-existence. The priority of self-assertion over otherness expresses in existential terms the precedence of freedom over nature. This unites Hegel and Hobbes. For Hegel too the basic drive of the modern self is towards the reaffirmation of self-certitude in desire. But infinite desire only serves to frustrate the self by generating dependence upon the object desired. Because desire has a telos, it can find genuine fulfillment. 'Self-consciousness attains satisfaction in another self-consciousness.'²⁹ Human desire is not infinite, since the self can attain satiation through the recognition of another. By claiming that self-expression can be achieved in the context of the human community, Hegel, unlike Hobbes, vindicates the beginning of classical political philosophy. The paradigm of subjectivity in Hegel is not self-preservation but spirit. When a self-consciousness has before it another self-consciousness, 'with this we already have before us the concept of Mind or Spirit'.³⁰ The structure of human self-consciousness is defined by the internalization of the original relation between self and other. This relation entails both theoretical cognition and a life-practice.

On the same grounds Hegel rejects the Kantian understanding of the person, which reduces intersubjectivity to the abstract and formal identity of all rational agents. Every agent capable of rational agency, according to Kant, is also capable of acting in accordance with the concept of such agency.³¹ Action proceeding out of one's self-understanding as such an agent is sufficient to entitle those exercising it to a moral claim to be recognized as persons. Since only the moral law can formulate the correct condition of such rational self-understanding, by acting in accordance with the moral law one necessarily accepts the standpoint of all other agents as one's own as well. The moral law is guaranteed intersubjective recognition simply because formal identity among selves is assumed. Kant describes a condition of mutuality with no communication and of plurality with no interaction. The Kantian 'I' is tautologically equivalent to a 'we'.³² For Hegel, the concept of the 'I' is not a universal simply because it is an abstraction formed in an

* The development of community through intersubjective relations, which Hegel portrays in the master-slave section of the *Phenomenology of Spirit*, is the subject of J. N. Bernstein's essay.

act of solitary self-reflection. Kant describes such universality in terms of the possibility that at any point the self can turn inwards and say 'I think that I think X.'³³ For Hegel, this return of the self inwards in reflection is not a movement away from object (*Gegenstand*) alone, but from an other who is likewise a self, and therefore, a partner (*Gegenspieler*). The abstract identity of persons is replaced by the concrete identity of mutually recognizing selves:

The concrete return of me into me in the externality is that I, the infinite self-relation, am as a person the repulsion of me from myself and have the existence of my personality in the being of other persons, in my relation to them and my recognition of them which is thus mutual.³⁴

The completed structure of reciprocal recognition describes mutual acknowledgement among individuals that the others are not objects but selves in whose independence and autonomy my freedom lives as well.

Hegel did not develop this analysis of human intersubjectivity until his writings of the Jena period. Yet his earliest criticism of contractarian methodologies was that they ignored the condition of men in the human community, and began with an arbitrary abstraction called the 'state of nature'. The modern tradition falsely considers human nature or rationality to be a given, argued Hegel. As long as individuals are seen as complete and mature outside the bounds of ethical life, as long as their fundamental nature is juxtaposed to their life in civil society, the relation of the individual to the ethical community is perceived as accidental. Ethical life is viewed as if it were an external bond arisen to satisfy the basic needs of the individual. All features that belong to particular customs, history, cultural formation (*Bildung*) and the state are thereby regarded as accidental, inessential to human nature.³⁵ The individual and the community thus stand opposed, whereas it is only through the community that the individual attains spiritual significance. Hegel quotes Aristotle on this point: 'The positive is according to nature prior to the negative, or as Aristotle said, the people [*das Volk*] is according to nature prior to the individual.'³⁶

In his early writings Hegel criticizes the arbitrariness of contractarian methodology on the basis of Aristotelian and Platonic presuppositions. After his discovery of the structure of human intersubjectivity in the Jena period, he will reject any methodology that posits human nature or rationality as a presocial given, ignoring the constitution and formation of human identity through interaction with other selves in the community. Whether it is on account of his Platonic and Aristotelian premises or because he accepts intersubjectivity as a basic human condition, Hegel in his political philosophy proceeds from the concrete historical and social conditions of the human community, and not from thought experiments.

The systematic oversight of the fundamental standpoint of the *Philosophy*

of *Right*, which presupposes a community of individuals who have reached reciprocal recognition, has led to much confusion concerning Hegel's discussion of property and has obscured his divergence from the tradition of 'possessive individualism'. Hobbes and Locke share the fundamental assumption that the 'individual is essentially proprietor of his own person and capacities for which he owes nothing to society'.³⁷ But for Hegel the right of property, far from being a paradigm of the autonomy of the individual, is deduced from the right of personality. A brief comparison with Locke will clarify Hegel's position. Locke infers that appropriation through labor creates a title to private property from the following assumptions. Man appropriates the world by the 'labor of his body, and the work of his hands'. The activity is 'his' because every man 'has property in his own person',³⁸ that is to say in his body. And these means of appropriation are private – body, hand, and mouth – because they are given to man individually. It is important to note that Locke's inference is from the privacy of the means of appropriation to the privacy of the object appropriated. As is well known, Locke's criterion of appropriation shifts radically in the course of the *Second Treatise* from what each man needs to preserve himself, to what he can appropriate for his use and enjoyment, and finally to what becomes 'benefit and the greatest conveniences of life'. The invention of money, Locke admits, creates a source of value beyond use by making it possible for men to accumulate as much as they please.³⁹ Since gold and silver do not perish, but can always be exchanged for other more useful and enjoyable objects, there are no natural limits on how much men can appropriate and make their own. With the introduction of money, labor ceases to be the title of property. Locke's vacillation in the discussion of the *Second Treatise* between naturalistic and social constraints on the origin and extent of property indicates his commitment to the viewpoint that the isolated appropriator can be taken as a logical beginning of human history. In order to conclude that the privacy of the means of appropriation entails the privacy of the object appropriated, Locke has to assume (a) that every man has 'property' in his own body and labor, (b) that the instruments of labor are privately owned, and (c) that land and other previous objects of labor are also private property.

Already in the *Jenaer Realphilosophie* Hegel distinguished between 'possession' (*Besitz*) and 'property' (*Eigentum*).⁴⁰ Possession is man's physical and anthropological capacity to appropriate externality for human purposes. Property is socially recognized and sanctioned appropriation. Man as a species has a universal right to put his will 'into any and everything that cannot resist it by a will of his own' (*PhR*, §44). Individuals, however, are always situated in a context of social relations with others, and it is the reciprocally binding normative relations among them that legitimize the rights of persons to preempt externality for their own ends and purposes (*PhR*, §45). Laboring,

forming, grasping or marking are patterns of appropriation or, in more abstract terms, various modes in which a subject can relate to objectivity. In the *Philosophy of Right* such human modes of appropriation are discussed under the heading of 'taking possession' (*Besitznehmung*) (*PhR*, §54). But taking possession confers the title of property only if the individual is situated in a context of social relations that legitimize this act.

Though Hegel's position may seem surprising at first, the issue becomes clearer once it is taken into account that his starting point is not an isolated individual, appropriating an equally isolated nature or external world. For individuals situated in an intersubjective and social context, nature or externality is already socially significant. If property relations are to be viewed as the behavior of individuals in a social context, the myth of the primordial relation between self and object must be replaced by a conception of individuals interacting through modes of appropriating an externality that is laden with social significance. For individuals who constitute a community of reciprocal recognition, the object of property serves as a medium in and through which such recognition is manifested and given presence as a public sign. The object of property is not a physical thing but a socialized or spiritualized object (*Sache*), for only another person, only another social being, can take cognizance of the thing as 'embodying' another's will. Thus Hegel writes: 'The thing (*Sache*) is the *means* by which the extremes meet in one. These extremes are the persons.'⁴¹

Nowhere is the social dimension of property more evident than in Hegel's discussion of the legacy of reformed Christianity. In modern property relations, nature is reduced to an external other that can be freely appropriated by the person.

It is about a millenium and a half since the freedom of personality began through the spread of Christianity to blossom and gain recognition as a universal principle from a part, though still a small part, of the human race. But it was only yesterday, we might say, that the freedom of property became recognized in some places (*PhR*, §62).

By shifting the locus of the sacred from the exterior to the interior, from object to subject, and from nature to spirit, reformed Christianity speeds the dissolution of those religions, world-views and cosmologies for which nature is still imbued with sacred significance.⁴² Reformed Christianity is a rationalizing force, for it destroys the 'enchanted garden' of those world-views and religions in which the confusion between nature and spirit often means the subordination of the individual to the will of another. The transformation of nature into an object of the will of free personality presupposes the categorical distinction between subject and object. Only that which has no will of its own can become the property of another. When spirit leaves nature and finds its realization in the human community, nature loses meaning and is

reduced to the merely external. Since Hegel rejects the myth of the isolated appropriator, as well as the myth of noumenal, ahistorical rationality, he views free property relations as an indicator of the rationalization of tradition and of the desacralization of nature.

Earlier Hegel had compared modern economic life to the motions of a 'blind' and 'elemental' animal.⁴³ The spread of legally regulated exchange-transactions throughout the community was perceived by him as the subjection of ethical life to the forces of 'nature'. Economic relations replaced the telos of men, the praxis of political life and action, by another form of life, dedicated to the satisfaction of the needs of life itself. But for men the goal is the transcendence of mere life in the name of the good life. In the *Philosophy of Right* Hegel compares modern economic life again to an inanimate natural system (§189 Addition). Here it is not the animal-like motions of economics, but those motions of the market unintelligible to the naked eye of the observer, which are emphasized. Modern economic life retains its opacity for the observer, and is in this sense not thoroughly rationalized. However, the nonrationality of the invisibly functioning economic laws is ontologically of a different order than the naturally prescribed systems of traditional economies. The imperceptible motions of the market are viewed as nonrational only by comparison with the criteria of formal equality, generality and predictability initiated by modern exchange and the modern legal system.

To recapitulate: having grasped the becoming of the modern state as a world-historical process generated by the rationalization of tradition through reform or revolution, the spread of bourgeois market relations and the spirit of reformed Christianity, Hegel does not resort to methodological thought experiments, but proceeds from the standpoint of a community of individuals who have come to recognize one another as persons to specify the form of social interaction through which such recognition is concretized as a practice. Individuals do not *choose* these practices in virtue of their being consistent with their entitlement to be treated as persons. On the contrary, *situated* in a community whose members have historically attained the standpoint of reciprocal recognition, individuals engage in social practices upholding the validity of property rights and contractual transactions. Hegel's methodological movement is from an abstract concept – personality – to the concrete forms of actuality that instantiate this concept as a reality in the social world. The stage of abstract right in the *Philosophy of Right* corresponds to the 'immediacy of free will', and to its unrealized or negative actuality. Since the actualization of free will designates the transition from concept to Idea (*PhR*, §§1 and 2), and since the exposition of freedom as Idea is the task of the science of right, the logical development of this section offers a key to the logic of the whole. 'An existent of any sort embodying the free

will, this is what right is. Right is therefore by definition freedom as Idea' (*PhR*, §29). The free will is first actualized as Idea when the person by appropriating the external world as property gives the human activity of transforming externality a concrete embodiment. Actuality (*Wirklichkeit*) designates the humanization of the given and the external (*Dasein*). But appropriation alone is not paradigmatic of free activity. The transformation of the existent into the actual proceeds through human activity that not only transforms the world in appropriating it, but which, in virtue of being situated in contexts of social interaction, imports social significance to the thing appropriated.

The *Philosophy of Right*, by a method of successive conceptual elaborations, moves from the sphere of abstract right to the sphere of moral interaction and to institutional ('ethical') life. The meaning of 'actuality' is transformed through this methodological movement. Actuality becomes not only the external thing that embodies the free will, but also the intention of the moral subject realized in his deeds in the world, and finally the objectively given world of institutions in which modes of appropriation and patterns of interaction combine to yield the matrix of social life. It is only when actuality assumes the form of a world organized in socio-historical institutions that 'the system of right as the realm of freedom make actual, the world of mind brought forth out of itself like a second nature' (*PhR*, §4). The oneness of the rational and the actual implies that Hegel's *Philosophy of Right* is neither a recounting of the empirically given and historically contingent facts, nor a dismissal of the empirical in the name of criteria that derive their validity from the *a priori* structures of human rationality or human nature. The transition from concept to actuality is made possible by the transformation of the existent into the actual. This transformation is the legacy of modernity and of world history: the rise of the legal-rational paradigm of authority, the spread of homogenizing market relations, and the spirit of reformed Christianity alter the socio-historical world in such a way as to make it an embodiment of human thought and intelligence. The *Philosophy of Right* claims to grasp the socio-historical order of modernity at the point when the determinations of this world correspond to the unfolding of a 'science of free will'.

III

Hegel's political philosophy gains a new significance as the current disenchantment with the theory and practice of liberalism on the one hand, and that of orthodox marxism on the other, deepens. It is argued that, if not Hegel's conclusions, then at least his process of reasoning remains vital for today: in the face of the inability of liberal thought and action to develop a coherent sense of community that would overcome apathy, anomie and

alienation, or put an end to the continuing domination of natural and social processes in the name of scientific objectivity. Charles Taylor has recently written the continuing relevance of Hegel's philosophy depends on a single issue: his radical critique of the modern tradition in the name of its most cherished principle of freedom.⁴⁴ While appropriating the modern conception of freedom as self-dependence or autonomy in a non-teleological universe, Hegel is able to situate freedom in a concrete human and spiritual context that gives it an objective expression. Hegel's political theory is seen as a brilliant attempt to accommodate the demands of modern freedom – autonomy, privacy, and self-expression – within the continuing integrity of a communal structure.

The opening arguments of the *Philosophy of Right* illustrate this aspect of Hegelian thought most visibly. Since Hegel does not begin with the condition of individuals who *choose* their conditions of existence but instead takes as his starting point, the *context* of interaction in which these individuals are placed, his political philosophy can *in principle* accommodate a wealth of historical and sociological insights that the liberal contractarian tradition cannot. By considering norms in the context of social interactions that instantiate them, Hegel suggests how the limits and hidden presuppositions of norms can be illuminated. The pitfalls of formalist moralizing, which juxtaposes *a priori* norms to social structures, and of descriptive positivism, which juxtaposes given social structures to norms, can be avoided by examining how norms become instantiated as individual and collective practices, and how social practices reinforce and contradict prevailing norms. Since for Hegel freedom is defined by the structure of a social practice, the evolution and transformation of social institutions create new conditions of freedom, while destroying older ones. The interdependence between social and historical possibility and normative validity is intrinsic to freedom as Hegel understands it. Freedom becomes a continuous dialogue between norm and structure, activity and process, identity and conduct in the life of the individual and of the collectivity.

Until recently twentieth-century marxism, while acknowledging its Hegelian heritage, had not revised its critical rejection of Hegel's political philosophy. Critical marxists from Horkheimer to Merleau-Ponty, from Korsch to Sartre, insisted that human freedom could find concrete fulfillment only in the social and historical world.⁴⁵ For this world, they agreed with Hegel, is not a dead and objective weight, but a living and subjective counterpart that remains impervious to human subjects only to the extent that they collectively fail to discover the doer behind the deed, the process of objectification behind the object, and human interaction behind the nature-like objectivity of social life.

It was accepted wisdom about Hegel's political philosophy that the critical